



330
11-13-07

THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: November 9, 2007

IBA Report Number: 07-109

City Council Date: November 13, 2007

Item Number: 330

Third Amendment to Disclosure Counsel Agreement

OVERVIEW

The City received a report on disclosure requirements from Vinson & Elkins LLP on September 16, 2004. The report recommended that the City retain a law firm to serve as the City's general disclosure counsel to provide continuity in the City's disclosure materials. In March 2004, the City selected the law firm of Hawkins, Delafield & Wood LLP (Hawkins) to serve as the City's general disclosure counsel.

The City Council is being asked to adopt an ordinance that will authorize an additional \$500,000 in a Third Amended and Restated Agreement with Hawkins. The Office of the City Attorney has provided an accompanying ordinance that would appropriate \$369,500 of the additional \$500,000 from the City's General Fund Unallocated (or Unappropriated) Reserve, with the remaining funds to be appropriated from City enterprise funds benefiting from general disclosure counsel services. This report briefly discusses the evolution of the contract and comments on the requested appropriation.

FISCAL/POLICY DISCUSSION

Evolution of the Agreement with Hawkins

The City initiated an agreement (Agreement) with Hawkins "for legal services related to general disclosure and continuing disclosure matters" on May 11, 2004. The initial agreement was for an amount not to exceed \$100,000 and contained a broad 14-item scope of services section focusing on City disclosure matters. Citing a need for



Office of Independent Budget Analyst

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Tel (619) 236-6555 Fax (619) 236-6556

additional general disclosure counsel services from Hawkins, the City executed a First Amendment to the Agreement with Hawkins on December 2, 2004, adding an additional \$150,000 to the Agreement. Each of the aforementioned agreements was processed at the request of the City Attorney by City Manager Action.

On March 8, 2005, the City Council approved Resolution R-300206, authorizing the City Manager to execute a Second Amended and Restated Agreement with Hawkins for general disclosure counsel services. This amendment increased the Agreement by another \$500,000. The specified term of the Second Amended Agreement was from April 1, 2004 through December 1, 2005.

The Office of the City Attorney is currently requesting that the City Council adopt an ordinance that would appropriate an additional \$500,000 for Hawkins and authorize a Third Amended and Restated Agreement. This amendment would bring the total authorized compensation for Hawkins to \$1,250,000 since the inception of the initial Agreement. There is no specified term for the proposed Third Amended Agreement and no discussion of the anticipated Agreement duration in the staff report.

In discussing the need for the proposed Third Amended Agreement, the Office of the City Attorney has informed the IBA that additional general disclosure counsel services are required and previously appropriated funds for the Agreement have been exhausted. The Second Amended and Restated Agreement expired on December 1, 2005. Additionally, the IBA has been informed that the City Attorney has been unable to pay approximately \$158,000 worth of invoices dating back to 2006.

Requested Reserve Fund Appropriation


The City Council is being asked to authorize an ordinance that would appropriate \$369,500 of the additional \$500,000 for the proposed Third Amended Agreement from the City's General Fund Unappropriated Reserve. The IBA believes such an appropriation will require an amendment to the Appropriation Ordinance before funds can be withdrawn from the Unappropriated Reserve. We recommend that such an appropriation is better made from the Appropriated Reserve specifically established for unanticipated annual expenses (by Item 52 on November 13th docket, if approved).


The IBA has shared this recommendation with the Office of the City Attorney and suggested that they consider developing a resolution that would alternatively authorize the requested appropriation from the Appropriated Reserve. The Office of the City Attorney has indicated that they will develop such a resolution. If the City Council decides to authorize the Third Amended Agreement, the IBA recommends the City Council adopt the resolution brought forward by the Office of the City Attorney to facilitate an appropriation from the Appropriated Reserve.

CONCLUSION

The IBA believes that the City needs continued general disclosure counsel services and that the requested Third Amended Agreement should be approved. We recommend that the Third Amended Agreement is appropriately funded from the Appropriated Reserve that has been established for unanticipated annual expenses. The IBA is concerned, however, that such an important contract has been allowed to expire for an extended period of time (since December 2005) and that services have been received in excess of appropriated funds.

In the future, general disclosure counsel services should be thoughtfully contemplated on a regular basis and accounted for in the annual budget process so as not to unnecessarily deplete appropriated reserves. The IBA understands that disclosure counsel services will occasionally be unanticipated; however, in this instance, the Agreement has been long expired and services have been rendered well beyond appropriated levels. If the Third Amended Agreement is approved, we recommend that invoices be immediately brought current and the City Council be periodically apprised of the status of the Disclosure Counsel Agreement going forward. Finally, the IBA recommends that the City competitively bid disclosure counsel services well before this new Agreement expires.


Jeff Kavar
Fiscal & Policy Analyst


APPROVED: Andrea Tevlin
Independent Budget Analyst

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Michael J. Aguirre
CITY ATTORNEY

330
11/13
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

November 6, 2007

**REPORT TO THE HONORABLE MAYOR AND CITY COUNCIL ON AMENDMENT TO
HAWKINS, DELAFIELD & WOOD LLP DISCLOSURE COUNSEL CONTRACT**

REQUESTED ACTION

Approve ordinance regarding amendments to the contract of Hawkins, Delafield & Wood LLP, to authorize amounts additional payable of \$500,000, over the amount of \$750,000 previously authorized thereunder.

STAFF RECOMMENDATION

Adopt the ordinance.

SUMMARY

In the Vinson & Elkin LLP Report entitled "The City of San Diego, California's Disclosures of Obligation to Fund the San Diego City Employees' Retirement System and Related Disclosure Practices 1996-2004 with Recommended Changes to the Municipal Code" dated September 16, 2004 [Report], it was recommended that the City retain a law firm to serve as the City's general disclosure counsel in order to provide for "continuity in the City's disclosure materials and a greater accountability on the part of disclosure counsel." In March 2004, the City retained the law firm of Hawkins, Delafield & Wood LLP [Hawkins] to serve as the City's general disclosure counsel. In that capacity, Hawkins has provided expert securities law advice to City staff regarding the requirements of securities laws for private placements and public offerings, continuing disclosure agreements and other disclosure matters. In addition, Hawkins has facilitated the training of City officials and staff with regard to the requirements of the federal securities laws. Finally, Hawkins also participates as a member of the Disclosure Practice Working Group under the requirements of Ordinance 19320 (adopted November 11, 2004).

FISCAL CONSIDERATIONS

The City shall compensate Hawkins Delafield & Wood LLP based on its hourly rates for the disclosure counsel services. This Third Amended and Restated agreement increases the ceiling for such compensation by \$500,000. Accordingly, the maximum amount to be paid under the contract is \$1,250,000, including reasonable out-of-pocket expenses. Authorize the Auditor and Comptroller to appropriate and transfer \$369,500 from the Unallocated Reserves (Fund 100) to Citywide Program Expenditures (Dept 601, Fund 100). Authorize the Auditor and Comptroller to expend \$369,500 from Citywide Program Expenditure (Dept 601), General Fund

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
ON HAWKINS, DELAFIELD &
WOOD LLP DISCLOSURE
COUNSEL CONTRACT

-2-

November 6, 2007

(100) and \$130,500 from various non-General Funds as detailed in attached line of accounting for the third amendment to the agreement with Hawkins Delafield & Wood LLP for General Disclosure Counsel Services.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION

The Council has previously approved the agreement, as amended, with Hawkins, Delafield & Wood LLP.

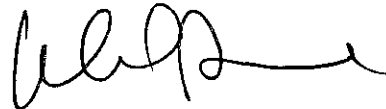
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS

N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS

Hawkins, Delafield & Wood LLP., All City departments.

Respectfully submitted,



MICHAEL J. AGUIRRE
City Attorney

MB
RC-2007-18

000409**DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO**

DATE:

330**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

October 5, 2007

11/13**SUBJECT:** Third Amendment to Agreement with Hawkins, Delafield & Wood- Disclosure Counsel Contract**GENERAL CONTRACT INFORMATION****Recommended Contractor:** Hawkins, Delafield & Wood LLP**Amount of this Action:** \$ 500,000.00**Original Contract:** \$ 200,000.00 ***Cumulative Total:** \$ 1,250,000.00**Funding Source:** City**SUBCONTRACTOR PARTICIPATION**

No subcontractor participation on this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**Equal Opportunity Required**

Hawkins, Delafield & Wood submitted Work Force Reports dated May 29, 2007. The Administrative Work Force Report reflects 189 employees. Under representations exist in the following categories:

Black in Administrative Support

Hispanic in Professional and Administrative Support

Filipino in Professional and Administrative Support

Females in Professional

EOC Staff is concerned about the under representations in the firm's workforce and non-participation of certified firms and therefore, has requested and received an EO Plan from Hawkins, Delafield & Wood that is currently under review. Staff will continue to monitor and work closely with the firm to assist in their outreach efforts.

ADDITIONAL COMMENTS

The Work Force Analysis is attached.

* Please note the Original Contract is: (1 year at 40,000 and 4 x 1-year term extensions@ 40,000)

RLL

File: Admin WOFO 2000

Date WOFO Submitted: 5/29/2007
Input by: SHGoals reflect statistical labor force
availability for the following: 2000 CLFA
New York, NYCity of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORT
FOR
Company: Hawkins Delafield & Wood LLP

I. TOTAL WORK FORCE:

	Black		Hispanic		Asian		American Indian		Filipino		White		Other	
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F
Mgmt & Financial	6.1%	0	0	7.9%	0	0	8.1%	0	0	0.1%	0	0	0	0
Professional	6.6%	2	4	7.4%	3	0	6.5%	4	5	0.1%	0	0	49	16
A&E, Science, Computer	5.2%	0	0	7.2%	0	0	14.7%	0	0	0.2%	0	0	0	0
Technical	16.5%	0	0	22.2%	0	0	12.6%	0	0	0.2%	0	0	0	0
Sales	9.3%	0	0	18.6%	0	0	8.0%	0	0	0.1%	0	0	0	0
Administrative Support	20.7%	5	12	24.5%	2	14	7.4%	3	6	0.1%	0	0	11	48
Services	16.6%	0	0	40.4%	0	0	13.8%	0	0	0.2%	0	0	0	0
Crafts	14.3%	0	0	44.4%	0	0	11.1%	0	0	0.2%	0	0	0	0
Operative Workers	6.9%	0	0	44.4%	0	0	32.2%	0	0	0.2%	0	0	0	0
Transportation	23.3%	0	0	55.8%	0	0	8.2%	0	0	0.1%	0	0	0	0
Laborers	21.2%	0	0	48.2%	0	0	10.0%	0	0	0.3%	0	0	0	0
TOTAL		7	16		5	14		7	11		0	0		60
														64
														1
														4

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL EMPLOYEES		
ALL	M	F
0	0	0
84	58	26
0	0	0
0	0	0
0	0	0
105	22	83
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0

Female
Goals
44.9%
53.4%
31.5%
50.0%
45.8%
66.7%
49.9%
18.1%
55.6%
12.9%
15.3%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

TOTAL

189	80	109
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	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Professional	5.54	6	N/A	8.22	3	(3.22)	5.46	9	3.54	0.08	0	N/A	5.46	0	(5.46)	44.88	26	(18.86)
A&E, Science, Computer	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Technical	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	21.74	17	(4.74)	25.73	16	(9.73)	7.77	9	1.23	0.11	0	N/A	7.77	0	(7.77)	70.04	83	12.97
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

000411 REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) 2800285	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY	
3. DATE: October 4, 2007			
4. SUBJECT: THIRD AMENDMENT TO HAWKINS, DELAFIELD & WOOD LLP -DISCLOSURE COUNSEL CONTRACT			
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Mark Blake - 533-5618 MS 59		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Jessie Fernandez -533-5874 MS59	
		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>	
8. COMPLETE FOR ACCOUNTING PURPOSES			
FUND			9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	SEE ATTACHED	LINE OF	ACCOUNTING
ORGANIZATION			
OBJECT ACCOUNT			
JOB ORDER			
C.I.P. NUMBER			
AMOUNT			
10. ROUTING AND APPROVALS			
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	KAREN HEUMANN, ASSISTANT CITY ATTORNEY	
2	EOCP	CELIA GRIFFIN	10/5/07
3	EAS	ALLISON SHERWOOD	10/5/07
4	LIAISON OFFICE	ED PLANK	10/9/07
5	AUDITOR	GREG LEVIN	10/12/07
6	FM	MARY LEWIS	10/10/07
7			
		DOCKET COORD:	COUNCIL LIAISON
		COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 11/13/07
11. PREPARATION OF: <input type="checkbox"/> RESOLUTIONS <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)			
1. An ordinance authorizing the Third Amended and Restated agreement with Hawkins Delafield & Wood LLP for General Disclosure Counsel Services, to increase their Agreement by \$500,000. 2. Authorize the Auditor and Comptroller to appropriate and transfer \$369,500 from the Unallocated Reserves (Fund 100) to Citywide Program Expenditures (Dept 601, Fund 100). 3. Authorize the Auditor and Comptroller to expend \$369,500 from Citywide Program Expenditure (Dept 601), General Fund (100) and \$130,500 from various non-General Funds as detailed in attached line of accounting for the third amendment to the agreement with Hawkins Delafield & Wood LLP for General Disclosure Counsel Services.			
11A. STAFF RECOMMENDATIONS: APPROVE THE ORDINANCE			
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.) <u>COUNCIL DISTRICT(S):</u> <u>COMMUNITY AREA(S):</u> <u>ENVIRONMENTAL IMPACT:</u> This activity is not a "project" and therefore exempt from CEQA pursuant to the State Guidelines Section 15060 (c) (3) <u>HOUSING IMPACT:</u> <u>OTHER ISSUES:</u>			

000413

EXECUTIVE SUMMARY SHEET

DATE ISSUED: October 4, 2007

REPORT NO.:

ATTENTION:

ORIGINATING DEPARTMENT: City Attorney

SUBJECT: Amendment to Hawkins, Delafield & Wood LLP Disclosure Counsel Contract

COUNCIL DISTRICT(S):

CONTACT/PHONE NUMBER: Mark Blake, Chief Deputy City Attorney/533-5618

REQUESTED ACTION:

Approve ordinance regarding amendments to the contract of Hawkins, Delafield & Wood LLP, to authorize amounts additional payable of \$500,000, over the amount of \$750,000 previously authorized thereunder.

STAFF RECOMMENDATION:

Approve the ordinance.

EXECUTIVE SUMMARY: In the Vinson & Elkin LLP Report entitled "The City of San Diego, California's Disclosures of Obligation to Fund the San Diego City Employees' Retirement System and Related Disclosure Practices 1996-2004 with Recommended Changes to the Municipal Code" dated September 16, 2004 [Report], it was recommended that the City retain a law firm to serve as the City's general disclosure counsel in order to provide for "continuity in the City's disclosure materials and a greater accountability on the part of disclosure counsel." In March 2004, the City retained the law firm of Hawkins, Delafield & Wood LLP [Hawkins] to serve as the City's general disclosure counsel. In that capacity, Hawkins has provided expert securities law advice to City staff regarding the requirements of securities laws for private placements and public offerings, continuing disclosure agreements and other disclosure matters. In addition, Hawkins has facilitated the training of City officials and staff with regard to the requirements of the federal securities laws. Finally, Hawkins also participates as a member of the Disclosure Practice Working Group under the requirements of Ordinance 19320 (adopted November 11, 2004).

FISCAL CONSIDERATIONS:

The City shall compensate Hawkins Delafield & Wood LLP based on its hourly rates for the disclosure counsel services. This Third Amended and Restated agreement increases the ceiling for such compensation by \$500,000. Accordingly, the maximum amount to be paid under the contract is \$1,250,000, including reasonable out-of-pocket expenses. Authorize the Auditor and Comptroller to appropriate and transfer \$369,500 from the Unallocated Reserves (Fund 100) to Citywide Program Expenditures (Dept 601, Fund 100). Authorize the Auditor and Comptroller to expend \$369,500 from Citywide Program Expenditure (Dept 601), General Fund (100) and \$130,500 from various non-General Funds as detailed in attached line of accounting for the third amendment to the agreement with Hawkins Delafield & Wood LLP for General Disclosure Counsel Services.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

000414

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council has previously approved the agreement, as amended, with Hawkins, Delafield & Wood LLP.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

All City departments.

Originating Department

Deputy Chief/Chief Operating Officer

000415

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800285

ORIGINATING

DEPT. NO.: 45

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$500,000.00

Vendor: Hawkins, Delafield & Wood, LLP

Purpose: To authorize the Third Amended and restated agreement for General Disclosure Counsel Services, to increase HD&W agreement by \$500,000. Authorize the Auditor/Comptroller to appropriate and transfer \$369,500 from the Unallocated Reserve (Fund 100) to Citywide Program Expenditures and expend per attached schedule.

Date: October 12, 2007 By: *Pam Valbert* 10/12/07

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL										

2008 FTE Allocation W/O MADS

Total Amount of AC/DP/Invoice:

\$ 500,000.00

000417

Line	CY/PY	Fund	Dept	Department Name	Org	Account	Job Order	Percentage	Amount
001	0	100		Unallocated Reserve transfer		9544		73.90%	369,500.00
002	0	41400	730	Golf Course	100	4151	002150	0.89%	4,450.00
003	0	41200	750	Environmental Protection	1001	4151	001002	0.07%	350.00
004	0	41200	751	Waste Reduction & Enforcement	1002	4151	001500	0.35%	1,750.00
005	0	41200	752	Refuse Disposal	1000	4151	000110	0.77%	3,850.00
006	0	41200	753	Resource Management	010	4151	002000	0.16%	800.00
007	0	41200	754	Collection Services	020	4151	004229	0.08%	400.00
008	0	41210	755	Waste Reduction & Enforcement	1002	4151	001500	0.15%	750.00
009	0	41210	757	Collection Services	020	4151	004229	0.98%	4,900.00
010	0	41210	758	Environmental Protection	010	4151	001001	0.03%	150.00
011	0	41210	759	Resource Management	010	4151	002010	0.12%	600.00
012	0	41500	760	Water	163	4151	000163	7.91%	39,550.00
013	0	41506	776	MWWD-Administration	455	4151	776260	8.51%	42,550.00
014	0	41100	720	Airports	2000	4151	001101	0.18%	900.00
015	0	50050	850	ECP-Water & Sewer Design	2000	4151	085010	1.12%	5,600.00
016	0	50050	5431	E&CP Water Wastewater Field Eng.	100	4151	543100	0.42%	2,100.00
017	0	41300	1300	Developmental Service Enterprise	1100	4151	001110	4.36%	21,800.00
TOTAL								100.00%	500,000.00

Estimated General Fund Working Capital (Unaudited)

	100	10001	41601	65013	
2007 Ending Cash or Equity in Pooled Cash and Investments	94,543,260	1,154,647	8,325	111,077	\$ 95,817,310
Receivables (Due Within 60 Days)	63,832,530	-	-	-	63,832,530
Payables	(33,646,912)	-	-	(40,672)	(33,687,584)
Working Capital Beginning Balance	124,728,879	1,154,647	8,325	70,404	125,962,257
Encumbrances	(33,955,555)	(3,790)	-	(70,207)	(34,029,552)
Other Restrictions		(1,150,857)	-	-	(1,150,857)
	(33,955,555)	(1,154,647)	-	(70,207)	(35,180,410)
Total Working Capital at 07-01-07	90,773,323	-	8,325	197	90,781,847
Actions Taken Since 7-1-07 (Macias, Gini & O'Connell, LLP)					(688,000)
Amounts Encumbered Waiting for Action (Charger's Settlement)					(1,980,340)
New Action (Hawkins Delafield & Wood)					(369,500)
Total Working Capital					87,744,007

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING ORDINANCE NO. O-19652 (NEW SERIES) ENTITLED "AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE FISCAL YEAR 2007-2008 AND APPROPRIATING THE NECESSARY MONEY TO OPERATE THE CITY OF SAN DIEGO FOR SAID FISCAL YEAR," BY AUTHORIZING THE CITY ATTORNEY TO ENTER INTO A THIRD AMENDED AND RESTATED AGREEMENT WITH HAWKINS, DELAFIELD & WOOD LLP TO PROVIDE GENERAL DISCLOSURE COUNSEL SERVICES TO THE CITY AND TO AUTHORIZE AUDITOR AND COMPTROLLER TO APPROPRIATE AND TO TRANSFER UP TO \$369,500 FROM THE CITY'S GENERAL FUND UNALLOCATED RESERVE TO CITYWIDE PROGRAM EXPENDITURES AND OTHER ACCOUNTS

WHEREAS, on July 30, 2007, the City Council adopted an Ordinance No. O-19652 entitled An Ordinance Adopting The Annual Budget For The Fiscal Year 2007-2008 And Appropriating The Necessary Money To Operate The City Of San Diego For Said Fiscal Year [Annual Appropriation Ordinance]; and

WHEREAS, in March 2004, the City retained the law firm of Hawkins, Delafield & Wood LLP [Hawkins] to serve as the City's general disclosure counsel to provide expert securities law advice to City staff regarding their obligations under federal securities laws; and

WHEREAS, in order for the City to continue utilizing the services of Hawkins it is necessary to amend the agreement to authorize the payment of additional sums thereunder, and such amount has not been budgeted to the Citywide Program Public Liability Fund; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Report of the City Attorney is hereby accepted.

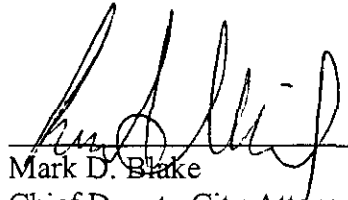
Section 2. That the Auditor and Comptroller is authorized and directed to appropriate and to transfer up to \$369,500 from the City's General Fund Unallocated Reserves to the Citywide Program Expenditure (Dept 601, Fund 100). The Auditor and Comptroller is further authorized and directed to expend \$369,500 from Citywide Program Expenditure (Dept 601, Fund 100), General Fund (100), and an amount not to exceed \$130,000 from various Non-General Funds, Account 4151, \$4,450.00 Golf Course Fund 41400, Dept. 730, \$350 Environmental Protection Fund 41200, Dept. 750, \$1,750 Waste Reduction & Enforcement Fund 41200, Dept. 751, \$3,850 Refuse Disposal Fund 41200, Dept. 752, \$800 Resource Management Fund 41200, Dept. 753, \$400 Collection Services Fund 41200, Dept. 754, \$750 Waste Reduction & Enforcement Fund 41210, Dept. 755, \$4,900 Collection Services Fund 41210, Dept. 757, \$150 Environmental Protection Fund 41210, Dept. 758, \$600 Resource Management Fund 41210, Dept. 759, \$39,550 Water Fund 41500, Dept. 760, \$42,550 MWWD-Administration Fund 41506, Dept. 776, \$900 Airports Fund 41100, Dept. 720, \$5,600 ECP-Water & Sewer Design Fund 50050, Dept. 850, \$2,100 E&CP Water Wastewater Field Eng. Fund 50050, Dept. 5431, \$21,800 Developmental Service Enterprise Fund 41300, Dept. 1300 for the purpose of providing funds for the above-referenced services.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. This ordinance is declared to take effect and be in force immediately upon its passage after two (2) public hearings pursuant to the authority contained in Section 71, 275, and 295 of the Charter of the City of San Diego.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Mark D. Blake
Chief Deputy City Attorney

MDB:jdf
10/04/07
11/06/07COR.Copy
Or.Dept:City Attorney
O-2008-38

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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**THIRD AMENDED AND RESTATED
RESTATED AGREEMENT
BETWEEN THE CITY OF SAN DIEGO
AND
HAWKINS DELAFIELD & WOOD LLP
FOR
GENERAL DISCLOSURE COUNSEL SERVICES**

A G R E E M E N T

THIS AGREEMENT is made between the City of San Diego [City], a municipal corporation, and Hawkins Delafield & Wood LLP [Firm].

WHEREAS, the Report on Investigation dated September 16, 2004, prepared by Vinson & Elkins L.L.P. recommended that "the City rely on a single, well-qualified firm to provide disclosure counsel services in order to provide for continuity in the city's disclosure materials and a greater accountability on the part of disclosure counsel"; and

WHEREAS, the Securities and Exchange Commission in the cease-and-desist order dated November 14, 2006, took note of remediation measures taken by the City, including having "hired new disclosure counsel for all of its future public offerings, who will have better and more continuous knowledge of the City's financial affairs"; and

WHEREAS, the City has engaged the Firm to serve as the City's general disclosure counsel to perform the services described in Article 1, and the Firm has been serving in such capacity since March 2004; and

WHEREAS, the Firm has proposed to continue to provide such services on an hourly basis; and

WHEREAS, the City has determined to accept the Firm's proposal and to continue to retain it for the above-referenced purposes;

NOW THEREFORE, in consideration of the terms and conditions set forth below and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

Article 1. Scope of Services

A. The City hereby retains the Firm to advise the City regarding its disclosure obligations under the federal securities laws, including, without limitation, in connection with (i) official statements of the City or of Related Entities (within the meaning of Ordinance No. O-19320) prepared for primary offerings of securities, (ii) continuing disclosure agreements entered into by the City or a Related Entity pursuant to Securities and Exchange Commission Rule 15c2-12, and (iii) Disclosure Documents, as defined below.

B. The City shall have the right in its sole discretion to determine the particular services to be performed by the Firm from time to time under this Agreement. These services may, but shall not necessarily, include, as directed by the City Attorney's office, the following:

(1) Attend meetings of the Disclosure Practices Working Group (established by Ordinance No. O-19320).

(2) Undertake principal drafting responsibility for Disclosure Controls and Procedures (referenced in Municipal Code § 22.4105).

(3) Review, as a member of the Disclosure Practices Working Group, "Disclosure Documents." "Disclosure Documents" means (i) the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations under applicable federal and state securities laws relating to its securities and (iii) any other disclosure which, pursuant to the Municipal Code, the Disclosure Group has the responsibility to review and approve. Disclosure Documents shall include, but not be limited to, the following:

- a. Preliminary and final official statements, and preliminary and final private placement memoranda, relating to the City's securities, together with any supplements; and
- b. the City Financial Statements; and
- c. any filing made by the City with the nationally recognized municipal securities information repositories, whether made pursuant to a continuing disclosure agreement to which the City is a party or made voluntarily; and
- d. press releases, rating agency presentations, postings on the investor information section of the City's webpage, and other communications, reasonably likely, in the determination of the Disclosure Group, to reach investors or the securities markets; and
- e. any disclosure materials requiring, pursuant to the Municipal Code, approval and certification by the Mayor, City Attorney, or City Auditor and Comptroller; and
- f. disclosures provided by the City in connection with securities issued by Related Entities, together with all of the documents and materials prepared, issued, or distributed in connection with such securities, to the extent that the City, the City Council, or City officers, or staff are responsible for the form or content of such documents or materials; and
- g. offering documents prepared by Related Entities if such documents are subject to the approval of the City Council acting as the City Council; and
- h. such portions of the City's published adopted annual budget as the Disclosure Group determines to be appropriate, which shall at a minimum include the executive summary; and

(4) Provide advice to the City regarding the three new positions established by Municipal Code § § 22.0302, 22.0303, 22.0304.

(5) Provide advice to the City Attorney's office or otherwise assist regarding its assessment of the City's disclosure practices.

(6) Conduct seminars regarding federal securities law responsibilities for City officials, City staff, City Council, and boards of Related Entities.

(7) Review existing continuing disclosure agreements to which the City or a Related Entity is a party.

(8) Review the most recent filings of annual reports, material event notices, and voluntary filings prepared by the City and the Related Entities.

(9) Draft and/or review, and advise the City and the Related Entities regarding any new continuing disclosure agreements prepared by the City or a Related Entity in connection with securities offerings.

(10) Draft and/or review, and advise the City and the Related Entities regarding contractual provisions relating to disclosure, other securities law matters and liability generally. These services include, but are not limited to, drafting, reviewing, and advising the City and Related Entities respecting agreements such as: bond purchase agreements; trust indentures; letters of credit; insurance or other credit enhancements; broker-dealer agreements or auction agent agreements; and any other agreements executed by the City or a Related Entity in connection with bond closings. These services also include, but are not limited to, drafting, reviewing, and advising the City and Related Entities respecting contractual obligations such as: disclaimers; indemnity provisions, 10b-5 certifications, and City Attorney opinions.

(11) Assist the City and Related Entities staffs in preparing for due diligence sessions conducted by underwriters and their counsel.

(12) Assist the City and Related Entities staffs in assembling all documents, agreements, reports and other writings that may be material in connection with the preparation of official statements.

(13) Draft or assist the City in the drafting of the City appendix.

(14) Work with City and Related Entities staff and their respective counsel (bond counsel, disclosure counsel, underwriters' counsel) in assuring consistent disclosure in official statements for which the City or a Related Entity is directly or indirectly responsible for the debt service.

(15) Assist City staff in finalizing and launching the City's investor webpage, including advising the City on the timing of releasing and launching the webpage. Such services shall include, but not be limited to, preparing appropriate disclaimers for: the posting of current official statements and Rule 15c2-12 filings; archived official statements and Rule 15c-2-12 filings; and third-party hyperlinked information.

(16) Respond as necessary, to City and Related Entities inquiries regarding disclosure matters in general (e.g., is an event a Rule 15c2-12 event, is it material, would it be prudent to disclose even if it is not a listed event, what is the potential liability for undertaking voluntary disclosure).

(17) Provide, if requested, memoranda advising the City and Related Entities of new developments impacting disclosure (e.g., private or Securities and Exchange Commission [SEC] litigation, new SEC rules or releases that address disclosure, proposed amendments to SEC statutes or regulations).

(18) Review and/or draft City pension related disclosure for offering documents or annual reports.

(19) Assist the City upon request in responding to any requests made by the City's Independent Consultant/Monitor appointed pursuant to the SEC's cease-and-desist order.

(20) Provide any other legal services requested by the City Attorney's office relating to matters of federal securities laws.

Article 2. Compensation

A. Services under this Agreement shall be performed under the direction of the City Attorney's office through Michael J. Aguirre, and Mark D. Blake or their designees.

(1) In light of the variability of the time and complexity of the issues involved, the Firm and the City agree to consult regularly, at least monthly, as to the level of effort which is appropriate in performing services hereunder.

(2) The Firm agrees to document a plan and budget which has been agreed to be the City Attorney's office, the Firm and the principal designee.

(3) The City shall not be obligated to pay the Firm amounts not documented, budgeted, and agreed to before being incurred by the Firm.

(4) The City shall compensate the Firm based on an hourly rate for the services provided for a maximum amount not to exceed \$500,000 including expenses in addition to the approximately \$750,000 paid to the firm for services during the last three years as general disclosure counsel. It is the understanding of the City and the Firm that the individuals on this engagement shall bill according to the City rates set forth below, which reflect a discount from the respective current rates:

	<u>Current Rate</u>	<u>City Rate</u>
John M. McNally (partner)	\$650	\$550.00
Arto C. Becker (partner)	\$600	\$500.00
William J. Burgess (associate)	\$400	\$300.00
Diane K. Quan (partner)	\$500	\$400.00
Ronald P. Wolf (partner)	\$500	\$400.00

B. The Firm shall not use more than one attorney for the same specific task without the City's approval. The Firm may use the minimum number of attorneys for this engagement consistent with good professional practice after consulting with and obtaining approval by the City.

C. The Firm shall keep the City advised monthly as to the level of attorney hours and client services performed. Attorney travel time not devoted to the performance of client services under this Agreement shall not be charged to the City.

D. The City further agrees to reimburse the Firm, in accordance with the procedures set forth in this Article, for telephone, mail, fax, overnight deliveries, document reproduction, travel, lodging, client-requested clerical overtime and similar out-of-pocket expenses charged by the Firm as a standard practice to its clients generally. In any billing for disbursements, the Firm shall provide the City with a statement breaking down the amounts by category of expense. The following items will not be reimbursed, unless the City has specifically agreed to accept the following expenses:

(1) Word Processing, clerical or secretarial charges, whether expressed as a dollar disbursement or time charge.

(2) Storage of open or closed files, rent, electricity, local telephone, postage receipts or transmission of telecopier documents, or any other items traditionally associated with overhead.

(3) Litigation support or any other service in excess of the amount actually expended by the Firm for such service. The City will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.

(4) Photocopy charges in excess of \$.10 (ten cents) per page.

(5) Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes.

(6) Secretarial overtime. The City will consider reimbursement on a case-by-case basis. The City will not reimburse overtime incurred for the convenience of the Firm's failure to meet deadlines known in advance.

(7) Equipment, books, periodicals, research materials, Westlaw/Lexis or like items.

(8) Express charges, messenger services or the like, without the City's prior consent. The City expects these expenses to be incurred in emergency situations only. Where necessity requires the use of these services, the City will consider reimbursement on a case-by-case basis.

(9) Attorney travel time not devoted to the performance of client services under this Agreement.

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E. The individual disbursement records customarily maintained by the Firm for billing evaluation and review purposes shall be made available to the City in support of bills rendered by the Firm.

F. The Firm agrees to forward to the City a statement of account for each one month period of services under this Agreement, and the City agrees to compensate the Firm on this basis.

Article 3. Conflicts

The parties hereto recognize that the Firm may have clients who may from time to time have interests adverse to the City, and the Firm reserves the right to represent such clients in matters not connected with the services provided by the Firm pursuant to this Agreement.

Article 4. Independent Contractor

A. The Firm shall perform services as an independent contractor. It is understood that this contract is for unique professional services. Accordingly, the duties specified in this Agreement may not be delegated by the Firm without the prior written consent of the City. Retention of the Firm is based on the particular professional expertise of the individuals rendering the services required in the Scope of Services.

B. It is mutually agreed that John M. McNally, Attorney at Law, will be the principal responsible for the delivery of the described services and will be assisted by other Firm attorneys as needed. Confidentiality of information supplied to or produced by the Firm for the City will be guaranteed by the Firm upon the request of the City.

Article 5. Confidentiality of Work

All work performed by the Firm including, but not limited to, all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Firm pursuant to this Agreement is for the sole use of the City and shall be confidential and not released to any third party without the prior written consent of the City.

Article 6. Key Personnel

The Firm shall submit in writing to the City, prior to assignment, the name, position description, resume and duration of assignment for each key professional employee to be designated to any project pursuant to this Agreement on a regular basis for more than three months. The Firm shall not remove, prior to completion of the assignment, any such employee assigned to a project without the prior written approval of the City, which approval shall not be unreasonably withheld. The Firm will nominate a replacement employee to the City and will not remove any employee from this Agreement until his/her replacement has been approved by the City. The City reserves the right at its sole discretion to request removal of any Firm employee or subconsultant assigned to this Agreement when, in the City's opinion, the individual's performance is unsatisfactory.

Article 7. Compliance with Controlling Law

The Firm shall comply with all applicable laws, ordinances, regulations and policies of the federal, state and local governments as they pertain to this Agreement. In addition to the foregoing, the Firm shall comply immediately with any and all directives issued by the City or its authorized representatives under the authority of any laws, statutes, ordinances, rules, or regulations.

Article 8. Acceptability of Work

Notwithstanding any other provisions herein, the City shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the acceptable completion of this Agreement, and the amount of compensation due. In the event the Firm and the City cannot agree to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the Firm in this Agreement, the City or the Firm shall give to the other written notice thereof. Within ten (10) business days thereafter, the Firm and the City shall each prepare a report which supports its position and file the same with the City and the other party. Thereafter, the City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance and/or the compensation payable to the Firm.

Article 9. Indemnification

The Firm agrees to defend, indemnify, protect, and hold the City and its elected officials, officers, agents, and employees harmless from all claims which result from the Firm's negligence or failure to perform the work or other obligations under this Agreement, and from all expenses of investigating and defending against same. This duty to defend, indemnify, protect, and hold harmless shall not include any claim based upon the alleged errors or omissions of the Firm related to the rendering of or the failure to render professional services arising from the sole negligence or willful misconduct of the City, its officers, agents or employees.

Article 10. Insurance

The Firm shall not commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to the City. At its sole cost and expense, the Firm shall take and maintain in full force and effect at all times during the term of this Agreement the following policies of insurance:

A. All applicable insurance for personal injury, bodily injury, and property damage, providing coverage to a combined single limit of One Millions Dollars per occurrence, subject to an annual aggregate of Two Million Dollars for general liability, completed operations, and personal injury.

B. For all of the Firm's employees which are subject to this Agreement, Workers' Compensation Insurance and Employer's Liability Coverage as required by the State of California.

C. Automobile insurance for all of the Firm's automobiles, including owned, hired, and non-owned automobiles, automobile insurance for bodily injury, and property damage providing coverage to a combined single limit of One Million Dollars per occurrence.

D. Errors and omissions insurance in an amount not less than One Million Dollars per claim, with an annual aggregate of Three Million Dollars.

E. All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM Best, are licensed to do business in the State of California, and that have been approved by the City. The City, including all of its officers, officials and employees, shall be named as an additional insured so long as this Agreement is in effect.

The City shall be furnished, upon request, with certificates evidencing the insurance, and if requested by the City Attorney, copies of all insurance policies. The Firm may effect for its own account insurance not required under this Agreement.

Article 11. Drug Free Work Place

The Firm agrees to comply with the City's Drug-Free Workplace requirements. Every person awarded a contract by the City for the provision of services shall certify to the City that it will provide a drug-free workplace. Any subcontract entered into by the Firm pursuant to this Agreement shall contain this provision.

Article 12. Equal Opportunity Program

The Firm agrees to be bound by the City's Equal Opportunity Contracting Program [EOCP] set forth in Exhibit A of this Agreement. The Firm shall submit statistical information to the City as requested in the City's Contract Activity Report [Report] attached hereto as Exhibit B. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Report. With the Report, the Firm shall provide an invoice from each subconsultant, if any, listed in the Report. The Firm agrees to issue payment to each firm listed in the Report within fourteen days of receiving payment from the City for subconsultant services. The Firm shall comply with EOCP requirements set forth in Exhibit C of this Agreement. The Firm shall ensure that its subconsultants comply with the City's EOCP requirements. Nothing in this section is intended to hold the Firm liable for any discriminatory practice of its subconsultants.

Article 13. Non Discrimination Ordinance

The Firm shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of its employees, any applicant for employment, any subcontractors, vendors, or suppliers. The Firm shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The Firm understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in contract termination, debarment, or other sanctions.

Article 14. Compliance Investigations

Upon the City's request, the Firm agrees to provide the City, within sixty days, a truthful and complete list of the names of all subconsultants, vendors, and suppliers that the Firm has used in the past five years on any of its contracts that were undertaken within San Diego County, including the dollar amount paid by the Firm for each subcontract or supply contract. The Firm

further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (San Diego Municipal Code sections 22.3501 through 22.3517) [Ordinance]. The Firm understands and agrees that a violation of this Article shall be considered a material breach of this Agreement and may result in remedies being ordered against the Firm up to and including termination of this Agreement, debarment, and other sanctions for violation of the provisions of the Ordinance. The Firm further understands and agrees that the procedures, remedies, and sanctions provided for in the Ordinance apply only to violations of the Ordinance.

Article 15. Americans with Disabilities

Every person or organization awarded a contract; lease or grant by the City of San Diego acknowledges and agrees to comply with Council Policy 100-04, adopted by Resolution No. R-282153, relating to the federally mandated Americans with Disabilities Act [ADA]. The Firm will be individually responsible for its own ADA program.

Article 16. Effective Date and Term

This Agreement shall be effective upon the date of execution and continue until completion of the scope of services, or upon written notice of cancellation. This Agreement may be extended at the mutual consent of the Firm and the City, and may be terminated at any time by mutual consent of both parties in its discretion, by written notice to the other.

Article 17. Notices

In all cases where written notice is to be given under this Agreement, services shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereunder, unless otherwise provided by notice in writing from the respective parties, notice to the City shall be addressed to:

Mark D. Blake
Chief Deputy City Attorney
Office of the City Attorney
1200 Third Avenue, Suite 1620
San Diego, CA 92101

Notice to the Firm shall be addressed to

John M. McNally
Hawkins Delafield & Wood LLP
601 Thirteenth Street, NW
Suite 800 South
Washington, D.C. 20005

Nothing herein contained shall preclude or render inoperative service or such notice in the manner provided by law.

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Article 18. Headings

All Article Headings are for convenience only and shall not affect the construction or interpretation of this Agreement.

Article 19. Time of Essence

Time is of the essence for each provision of this Agreement.

Article 20. Municipal Powers

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

Article 21. California Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The Firm covenants and agrees to submit to the personal jurisdiction of any state court in the City of San Diego, the State of California for any dispute, claim or matter arising out of or related hereto.

Article 22. Integrated Agreement

This Agreement, including Attachments and/or Exhibits, contains all of the Agreements of the parties and all prior negotiations and agreements are merged herein. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by the City and the Firm.

Article 23. Severability

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

Article 24. Waiver

The failure of the City to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

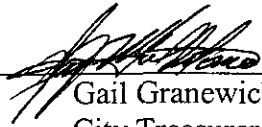
Article 25. Maintenance of Records

The Firm shall maintain books, records, logs, documents, and other evidence sufficient to record all actions taken with respect to the rendering of the services described herein throughout the term of this Agreement and for a period of three years following completion of the services pursuant to this Agreement. The Firm agrees to allow the City to inspect, copy, and audit such books, records, documents, and other evidence at all reasonable times.

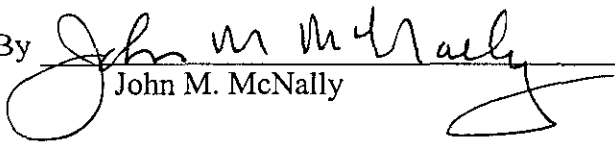
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IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 2007.

CITY OF SAN DIEGO

By _____
Gail Granewich
City Treasurer

HAWKINS DELAFIELD & WOOD, LLP

By _____
John M. McNally

APPROVED AS TO FORM AND LEGALITY

THE CITY OF SAN DIEGO
MICHAEL J. AGUIRRE, City Attorney

By _____
Mark D. Blake
Chief Deputy City Attorney